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Comprehensive dialogue with United Nations agencies and funds

Report on the Inter-Agency Support Group on Indigenous Peoples' Issues annual meeting for 2014

Note by the Secretariat

Summary

The annual meeting of the Inter-Agency Support Group on Indigenous Peoples' Issues was held in Geneva on 1 and 2 December 2014. It was hosted by the Office of the United Nations High Commissioner for Human Rights in accordance with the Support Group's terms of reference and the practice established in 2002 of rotating the chair annually among its members.

The Support Group discussed, among other matters, key issues related to the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (resolution 69/2), including follow-up by the Support Group of the recommendations contained in the outcome document. The meeting provided an opportunity to discuss the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples and the utilization of holistic indicators of indigenous peoples' well-being. In the outcome document, States committed themselves to developing and implementing national action plans, strategies or other measures to achieve the ends of the Declaration and invited United Nations agencies to support such implementation, as requested.

* E/C.19/2015/1.

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Report on the Inter-Agency Support Group on Indigenous Peoples' Issues annual meeting for 2014

I. Background

1. As Chair of the Inter-Agency Support Group on Indigenous Peoples' Issues for 2014-2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) hosted the annual meeting of the Support Group, which was held on 1 and 2 December 2014. Together with the Co-Chair (the secretariat of the Permanent Forum on Indigenous Issues), OHCHR will continue to serve as Chair of the Support Group until the end of the fourteenth session of the Permanent Forum on Indigenous Issues (1 May 2015).

A. Attendance

2. The meeting was attended by focal points for indigenous peoples' issues from 17 international agencies. In addition, the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli Corpuz, the Chair of the Permanent Forum, Dalee Sambo Dorough, and the Permanent Forum's focal point for the Support Group, Joan Carling, took part in the meeting. The list of participants is contained in annex I. The representative of OHCHR, Antti Korkeakivi, and the Chief of the secretariat of the Permanent Forum, Chandra Roy-Henriksen, co-chaired the meeting. The meeting participants adopted the provisional agenda, which is contained in annex II.

B. Opening of the meeting

3. The opening address was delivered by the Chief of the Indigenous Peoples and Minorities Section of OHCHR, Mr. Korkeakivi, on behalf of the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri. In her statement, the Deputy High Commissioner emphasized that cooperation among United Nations agencies working on indigenous peoples' issues and between such agencies and the mandate holders working on those issues was critical for advancing the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, both at headquarters and in the field. In this work, the role of the Inter-Agency Support Group on Indigenous Peoples' Issues was crucial. The Deputy High Commissioner also expressed her appreciation to the United nations Children's Fund (UNICEF), as the outgoing Co-Chair of the Support Group and as the entity that had helped pave the way for the active engagement of the Support Group in the World Conference on Indigenous Peoples.

4. During the opening session, the Chair of the Permanent Forum on Indigenous Issues underlined the importance of continuous inter-agency collaboration, in particular in the light of the World Conference on Indigenous Peoples and its outcome document. While there was no specific reference to the Permanent Forum in relation to the Support Group in the outcome document, the Permanent Forum should be involved in the development of a system-wide action plan on indigenous peoples. To this end, the Chair had sent a letter to the Under-Secretary-General for Economic and Social Affairs, Wu Hongbo, who is the most senior official in the

United Nations system responsible for coordinating the development of the action plan, raising awareness of the rights of indigenous peoples and increasing the coherence of the activities of the system. In the letter, the Under-Secretary-General was invited to meet with members of the Permanent Forum and indigenous representatives, on indigenous territory, as a first step towards following up on the outcome document. The Chair also reiterated the need for the Support Group and the members of the Permanent Forum to hold an additional one-day meeting, at the fourteenth session of the Forum, to discuss activities initiated by United Nations agencies at the national and international levels.

5. The representative of UNICEF noted that the Support Group had played a key role in the coordination of efforts on indigenous peoples' issues. The collaborative thematic papers prepared by the Support Group, in particular, had demonstrated the value added by the Group to the World Conference on Indigenous Peoples. That initiative could and should serve as a model for similar inter-agency efforts, including on human rights, gender and disability. UNICEF called on the Support Group to keep the rights of indigenous children and adolescents at the forefront of their deliberations.

6. With regard to the role of the Support Group, the Special Rapporteur on the rights of indigenous peoples emphasized the need for increased inter-agency collaboration and coordination on indigenous issues at the country level. She also encouraged the Support Group to provide support for her country missions. Such support could include the preparation of summaries of United Nations agencies' country-specific guidelines and programmes on indigenous peoples, as well as opportunities for technical and financial assistance to promote the rights of indigenous peoples in countries visited. She also suggested that a general overview of United Nations agencies' budgets and resources specifically allocated to projects and programmes for indigenous peoples would help her in carrying out her mandate.

7. In a video message, the Under-Secretary-General for Economic and Social Affairs thanked the Support Group for its work in the lead-up to the World Conference. He noted that his responsibility lay in carrying out three interrelated tasks: coordinating the development of a system-wide action plan; raising awareness of the rights of indigenous peoples; and increasing the coherence of the activities of the United Nations system in that regard. That could only be achieved if Member States, indigenous peoples and the United Nations system cooperated closely. The Under-Secretary-General emphasized the significance of the reference made in the outcome document to the roles of the Support Group and the United Nations system at large in achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, and welcomed the technical and substantive input of the Support Group in preparing the system-wide action plan.

II. Follow-up by the Support Group on the outcome document of the World Conference on Indigenous Peoples

A. System-wide action plan

8. One of the main objectives of the World Conference on Indigenous Peoples was to define United Nations agencies' actions to follow-up on the recommendations of the outcome document, including the recommendation that a

system-wide action plan be developed in consultation and cooperation with indigenous peoples, the Support Group and Member States. Discussions on the issue focused on preparations for the development of the action plan and ways in which the Support Group could best support the Department of Economic and Social Affairs in that process, drawing on lessons learned by colleagues working on other United Nations system-wide action plans, including the ones on youth[1] and gender.[2]

9. The secretariat of the Permanent Forum provided an overview of the background, expected outcomes and proposed methods of work, as well as of potential timelines and milestones that could be considered in developing the system-wide action plan. Given that the action plan has to be developed within existing resources, the Support Group could consider whether to include a fundraising element in the process. It was suggested that, in the future, the Support Group could prepare a brief executive summary, an introduction including recommendations for action and a matrix clearly outlining the priorities to be identified during consultations with Member States and indigenous peoples.

10. Several participants stressed that the system-wide action plan needed to be responsive to the needs and rights of indigenous peoples, as well as to the needs of Member States, and fit in with the different mandates of United Nations bodies. It was also noted that the action plan should take into account indigenous peoples that lived in developed countries where there was no United Nations field presence, and that this would have implications in terms of identifying lead and support United Nations entities to implement the identified priorities and report on their implementation. The secretariat of the Permanent Forum also drew attention to the timeline established in the outcome document, according to which a progress report would have to be prepared by no later than July 2015 so as to be submitted to the General Assembly at its seventieth session, in September 2015.

11. Throughout the discussions on the system-wide action plan, the importance of the ongoing deliberations on the post-2015 development agenda was highlighted. A representative of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) noted that the Support Group needed to consider how the sustainable development goals would influence the work and activities related to indigenous peoples and cautioned against developing it in parallel to instead of as part of the sustainable development goals. The representative of the International Fund for Agricultural Development (IFAD) said that the action plan and the sustainable development goals should complement each other; the action plan should not depend entirely on, nor be driven by, the sustainable development goals adopted by the General Assembly but, rather, be based on identified priorities and then be linked with the goals. A representative of the United Nations Development Programme (UNDP) stressed that the action plan should focus on implementation.

12. A representative of the secretariat of the Permanent Forum spoke about the United Nations System-wide Action Plan on Youth, an initiative of the Secretary-General established in response to high levels of youth unemployment in the wake of the 2008 financial crisis. Since it had become operational in 2012, many of its aspects had changed, including the matrix setting out commitments and measures.

[1] See www.youthpolicy.org/library/wp-content/uploads/library/2013_Youth_SWAP_Plan_Eng.pdf.

[2] See www.unwomen.org/~/media/Headquarters/Attachments/Sections/How%20We%20Work/UNSystemCoordination/UN-SWAP-Framework-Dec-2012.pdf.

Key United Nations agencies had taken the lead on developing certain areas of the Action Plan, in terms of drafting the goals for the different focus areas, following up on those goals and reporting on their implementation. As will be the case with the system-wide action plan on indigenous peoples, the Action Plan had been developed within existing resources, which had proved challenging. One important lesson learned from the experience gained with the Action Plan was that the number of indicators should be kept at a minimum and that implementing entities should not be burdened with excessive reporting requirements.

13. A representative of UN-Women shared her experiences in developing the United Nations System-wide Policy on Gender Equality and the Empowerment of Women, which applied to all entities, departments and offices of the United Nations and was structured around 15 performance indicators and standards. The process of developing the Action Plan included holding consultations with more than 50 entities, departments and inter-agency coordination bodies. The initial framework was piloted by eight United Nations entities and was then refined on the basis of a review of the results and challenges. To encourage implementation, the Action Plan contained technical notes on good practices for each performance indicator. The Action Plan was developed with very few resources, both human and financial.

14. The United Nations System-wide Policy on Gender Equality and the Empowerment of Women had created a strengthened conceptual model by which to promote gender equality and the empowerment of women and led to harmonized reporting that identifies system-wide strengths and weaknesses. Importantly, the fact that heads of entities and senior managers had endorsed its implementation had revitalized and enhanced engagement. In addition, the Action Plan constituted a well-acknowledged response to Member States' requests for increased accountability and focus on gender equality and the empowerment of women. Moreover, it had resulted in greater cooperation and healthy competition among United Nations entities, and enhanced clarity about what gender mainstreaming means for non-gender specialists. Challenges related to its future implementation included the continuous development of content and the continuous search for renewed commitment (to fight fatigue), a lack of adequate levels of staffing and resources, and the insertion of the Action Plan into the many legislative documents of each entity.

15. It was stressed that the system-wide action plans on youth and gender were very different in terms of their content, with the former focusing on external action and the latter focusing on mainstreaming gender equality within the United Nations system. As for the system-wide action plan on indigenous peoples, it was agreed that the United Nations Declaration on the Rights of Indigenous Peoples should be at its core. A UNDP representative stressed that the ultimate aim of the action plan should be to support efforts that would lead to the realization of Member States' international human rights obligations towards indigenous peoples. She also noted the importance of having data, including disaggregated data, and of ensuring indigenous peoples' participation in the accountability and monitoring framework.

16. Participants stressed the importance of involving national and regional offices in the development of the system-wide action plan. A UN-Women representative suggested that the Support Group engage with United Nations country teams and that such country-level engagement could already begin. Given that national and regional ownership of the action plan was important, Support Group members

needed to engage properly with their country offices, not only by sending information notes but by truly engaging with them to raise awareness of indigenous peoples' rights, the World Conference and its outcome document, and the mandates and work of United Nations mechanisms that promote indigenous peoples' rights. The representative of the secretariat of the Convention on Biological Diversity emphasized the need to take into account differences among Support Group members in terms of mandates and country-level presence, underlining that not all members, including his own secretariat, had country or field presences. The action plan needed to capture that diversity.

17. The representative of OHCHR noted that, in developing the system-wide action plan, the Support Group should be mindful of elements that may have been developed already. They included the guidelines of the United Nations Development Group on indigenous peoples' issues, the Programme of Action for the Second International Decade of the World's Indigenous People and the United Nations Indigenous Peoples' Partnership.

18. Participants discussed the need to establish a small internal working group to take the lead on the development of the system-wide action plan. While the working group would consist of a handful of Support Group members, membership would be open to all Support Group agencies. The representative of the secretariat of the Permanent Forum presented a paper that included a proposed timeline for the development of the action plan and said that the fourteenth session of the Permanent Forum and the eighth session of the Expert Mechanism on the Rights of Indigenous Peoples (July 2015) would provide opportunities to consult with stakeholders, including indigenous peoples. It was hoped that an advanced draft of the action plan would be ready for consideration by the High-level Committee on Programmes of the United Nations System Chief Executives for Coordination at its session in late 2015. A representative of UNDP said that her agency was committed to communicating developments regarding the action plan to Resident Coordinators through the Resident Representatives network. The Support Group also discussed the need to identify champions of the action plan, preferably Resident Coordinators, as they could help to give momentum to the process within the United Nations system.

B. Indicators

19. A session was devoted to a discussion on indicators on indigenous peoples' well-being. A representative of OHCHR said that the discussion was extremely timely and that the Support Group might consider preparing key messages on indicators of relevance to the rights of indigenous peoples that could be fed into the process of deliberating and finalizing the post-2015 development agenda and the sustainable development goals. A representative of UN-Women noted that there were several subcategories of indigenous peoples, including indigenous women and indigenous persons with disabilities, which needed to be considered when deciding which indicators to operationalize. The representative of the secretariat of the Convention on Biological Diversity emphasized the need to build on existing Support Group members' work on indicators, especially those that had already been adopted by various United Nations bodies, and that the focus should be on using the indicators already adopted rather than on creating new ones.

20. The representative of the secretariat of the Convention on Biological Diversity presented the work on indicators on indigenous peoples' traditional knowledge and the customary, sustainable use of biological resources that had been developed and adopted in the context of the Convention on Biological Diversity. The four indicators on traditional knowledge and the customary sustainable use of biological resources adopted by the 194 States parties to the Convention had been suggested by indigenous peoples themselves. They were: trends of linguistic diversity and numbers of speakers of indigenous languages; trends in land-use change and land tenure in the traditional territories of indigenous communities; trends in the practices of traditional occupations; and trends in the degree to which traditional knowledge and practices are respected through their full integration, safeguards and the full and effective participation in the national implementation of the Strategic Plan for the Convention on Biological Diversity. Those indicators had some weight, as they had been adopted by most of the States that had ratified the Convention. Suggesting that the indicators already established within the framework of the Convention could be used as a basis for the Support Group work on indicators, the representative called for a small internal working group to be established to work on operationalizing agreed indicators and consider their application to the post-2015 development agenda and the sustainable development goals.

21. It was proposed that such a working group should also focus on operationalizing the indicators developed under the Convention and by others within the United Nations system. The working group should also be encouraged to consider strategic questions, including the applicability of adopted indicators to other processes, such as the process for the sustainable development goals, and the need for additional indicators once progress had been made on the agreed indicators. Draft terms of reference for a working group on indicators would be developed and submitted to the Support Group for its consideration.

22. The representative of the secretariat of the Convention on Biological Diversity presented information on an indigenous initiative referred to as "community-based monitoring and information systems" and spoke of the potential for the initiative to contribute to the process for the development of indicators. States parties to the Convention had welcomed the initiative and were considering ways in which it could contribute to monitoring the implementation of the revised Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, including target 18, on traditional knowledge and the customary sustainable use of biological resources.

23. The representative of the United Nations Environment Programme (UNEP) referred to the work of UNEP on developing integrated measures for monitoring in the sustainable development goals and the post-2015 process and the proposed indicators on common land and natural resources. The representative of IFAD outlined the work of IFAD on developing indicators on indigenous food systems and sustainable livelihoods; those indicators were being discussed in regional workshops in preparation of the second global meeting of the Indigenous Peoples' Forum at IFAD, scheduled for February 2015. IFAD was also preparing a practical guidance note on how to seek free, prior and informed consent in IFAD-funded projects.

24. The representative of the International Labour Organization (ILO) provided an overview of a framework for monitoring the implementation of the United Nations Declaration on the Rights of Indigenous Peoples prepared by ILO in collaboration with the Asia Indigenous Peoples Pact, the Forest Peoples Programme and the

International Work Group for Indigenous Affairs. The monitoring framework served multiple purposes, including guiding and orienting indigenous peoples' self-determined governance, development and management strategies; holding States accountable by highlighting their compliance or lack of compliance with their human rights obligations; and providing information to guide and orient States' and donors' policies and programmes.

25. A representative of OHCHR referred to the integration of human rights indicators into the post-2015 development framework and emphasized the participation of concerned groups in the collection of data. The representative stressed that indicators should always be linked to human rights standards and reflect the indivisibility of human rights. Indicators played a central role in strengthening accountability and in highlighting the obligations of duty bearers. The Statistical Commission of the Department of Economic and Social Affairs of the Secretariat was important in that regard and could be approached by the Support Group. It was emphasized that the recent report entitled *A World that Counts: Mobilizing the Data Revolution for Sustainable Development, 2014* and, in particular, its considerations of human rights and data protection, could serve as an important guide to the Support Group's work on indicators. The representative also referred to the recent OHCHR publication entitled *Human Rights Indicators: A Guide to Measurement and Implementation*, which aimed to assist in developing quantitative and qualitative indicators to measure progress in the implementation of international human rights norms and principles, including the rights of indigenous peoples. A representative of UNDP raised the issue of national human rights institutions, which existed in more than 100 countries. A large number of such institutions had been accredited A status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and produced regular reports on trends and issues related to violations, which could be useful. In addition, national human rights institutions played an important role in supporting national statistical commissions in developing rights-based statistical models and approaches for censuses.

26. Speaking of indicators on indigenous peoples and the sustainable development goals, the Permanent Forum's focal point for the Support Group highlighted the need to look at indigenous peoples' poverty in a more holistic way. Rather than relying on the standard threshold of extreme poverty (an income of $1.25 per day per person), efforts to measure indigenous peoples' actual poverty should be linked to other factors defined by indigenous peoples themselves, including land security.

27. Participants discussed the proposal on the establishment of an internal working group to look into existing Support Group initiatives on indicators relevant to indigenous peoples. The working group would aim to operationalize a handful of indicators developed on the basis of consultations held with indigenous peoples and Member States. The representative of IFAD proposed that the Support Group hold a side event on indicators during the fourteenth session of the Permanent Forum, in 2015.

C. Role of and cooperation with national human rights institutions

28. *In the light of the outcome document* of the World Conference and its recognition of the important role of national and regional human rights institutions

in contributing to the achievement of the ends of the United Nations Declaration on the Rights of Indigenous Peoples, the participants discussed the role of national human rights institutions in promoting the rights of indigenous peoples. The session was chaired by the representative of UNDP, who stressed the important role played by such institutions in advancing rights-based policies for the most marginalized and gave specific examples of where they had played a pivotal role in supporting the rights of indigenous peoples (for example in Malaysia and Peru) and the growing recognition of the importance of national human rights institutions at the national, regional and international levels, including in the Human Rights Council universal periodic review process.

29. In her presentation on the role of national human rights institutions, the representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights emphasized that national human rights institutions played an important role in implementing the outcome document of the World Conference, including in terms of strengthening reporting to the United Nations and in supporting and monitoring national action plans to implement the Declaration. To that end, it was crucial to ensure that national human rights institutions had sufficient human and financial resources and the capacity to promote the rights of indigenous peoples. United Nations agencies too played an important role in providing capacity-building support, including through training sessions and workshops to national human rights institutions so that they can effectively promote and defend the rights of indigenous peoples at the national level and report on States' compliance with their international human rights obligations, including the Declaration, to the United Nations system. The representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights emphasized that the United Nations system had yet to develop a harmonized approach on the effective participation of national human rights institutions in treaty bodies and human rights mechanisms. She added that the number of national human rights institutions with A status should increase.

30. The representative of the OHCHR National Institutions and Regional Mechanisms Section underlined the importance of having national human rights institutions participate in United Nations processes. Such institutions contributed to raising awareness about, and advocating for, compliance with the international human rights system and to translating international human rights norms into national policies. They also provided independent local expertise on the national human rights situation (e.g. on domestic laws and policies), disseminated recommendations from the international human rights system and conducted follow-up action, including by reporting to the United Nations system on States' implementation of recommendations. It was important that national human rights institutions mainstream indigenous peoples' rights into their work. It was emphasized that, at the national level, national human rights institutions were in a good position to advocate and advise States and also to participate in treaty implementation efforts. National human rights institutions could participate actively in the preparation of national reports by gathering and providing accurate information. They could also prepare parallel reports that focused on the implementation of indigenous peoples' rights and, importantly, provide assistance with the filing of individual complaints.

31. At the international level, national human rights institutions could play an important role in providing accurate information to the treaty bodies, contributing to

the list of issues and providing concise and up-to-date country information to complement national reports. While calling special procedures mandate holders' attention to particular cases of indigenous peoples, national human rights institutions should encourage Governments to extend to mandate holders standing invitations to visit their countries, communicate and meet with mandate holders and assist in the preparation of country visits by proposing reliable and relevant interlocutors and providing relevant background information.

32. The Permanent Forum's focal point for the Support Group indicated that lack of funding was a serious problem that prevented national human rights institutions from participating in meetings, including those devoted to indigenous peoples' issues. It was proposed that a meeting could be hosted by the International Coordinating Committee for National Human Rights Institutions and that indigenous peoples attending the session of the Expert Mechanism on the Rights of Indigenous Peoples, which attracts many indigenous representatives, could participate in that meeting. Participants also stressed that a good number of national human rights institutions participated in Permanent Forum sessions.

33. A representative of OHCHR introduced the manual for national human rights institutions that OHCHR, together with the Asia-Pacific Forum of National Human Rights Institutions, had launched in 2013. The representative explained that the manual had proved to be a useful tool to engage with national human rights institutions at the country level and enhance dialogue between such institutions, indigenous peoples' representatives and government actors. She shared experiences arising from the outcomes of events organized in the Russian Federation and Southern African countries at which discussions had prompted requests for further guidance and partnerships to advance the rights of indigenous peoples through national human rights institutions. She added that the manual could serve as a useful guide for increased engagement between Support Group members and national human rights institutions.

34. The Chair of the Permanent Forum drew attention to a Permanent Forum recommendation on disseminating widely the United Nations Declaration on the Rights of Indigenous People and to the need to reinvigorate efforts aimed at implementing the recommendation, including through any relevant training that might be needed. The ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and the Declaration were complementary and must be read together. The links to other international instruments and principles, including the Guiding Principles on Business and Human Rights, were also highlighted. The Chair emphasized the need to monitor the jurisprudence and decisions arising from national human rights institutions and human rights treaty bodies and to continuously update those developments and share them with all human rights institutions, at all levels.

35. In order to amplify the effectiveness of the outcomes of the decisions of regional human rights bodies, such as the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, national human rights institutions needed to be made aware of and incorporate those decisions into their work and assessment of human rights complaints. Implementation of the outcomes was crucial. In that regard, an important question that should be considered was how the United Nations could better support national human rights institutions to

effectively compel States to follow up on decisions and recommendations issued by regional commissions and courts, as well as by the United Nations system.

D. National action plans and strategies

36. A representative of OHCHR said that the United Nations High Commissioner for Human Rights had been particularly involved in encouraging States to adhere to the commitment made in the outcome document to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration. OHCHR was committed to supporting States' efforts to develop action plans on indigenous peoples. The representative recalled that the Human Rights Council, during its session in September 2014, had requested the Expert Mechanism on the Rights of Indigenous Peoples to continue to carry out surveys on the implementation of the Declaration. The Expert Mechanism was currently revising its annual questionnaire to States and would be including, in the questionnaire for 2015, an additional question on national action plans.

37. The representative of the International Land Coalition (ILC) said that ILC was developing national engagement strategies on land governance in 20 countries, as a result of which national platforms would be created to influence national land policies. Given that the majority of those strategies included activities with important implications for indigenous peoples, ILC proposed linking Support Group members with the national platforms and networks.

38. Members of the Support Group discussed the extent to which Support Group involvement in national action plans should be linked to the strategic programme frameworks (the United Nations development assistance frameworks) for the United Nations country teams. They concluded that much of the responsibility for following up on the outcome document, in particular in terms of national action plans, rested with Member States and that coordination of the implementation of the outcome document's recommendations would, by and large, take place at the national level. That had implications for the United Nations country teams. They also concluded that the process to follow up on the outcome document, including by the United Nations system, should be linked to the United Nations development assistance frameworks. The need to link the national action plans to the frameworks was considered fundamental for ensuring a coherent and sustainable intervention. Recognizing that the frameworks had their own dynamics and timelines and that they usually took several years to be developed and finalized, it was suggested that the upcoming midterm reviews of the frameworks could serve as an important entry point for ensuring that the outcome document would be taken into account in the final framework.

39. The relationship between the national action plans and the system-wide action plan and the integration of the plans into the mainstream development framework, including with regard to national development and budgeting, were also raised.

40. The representative of IFAD said that under the IFAD grant supporting the World Conference on Indigenous Peoples, a second component would focus on policy dialogue and capacity-building for the implementation of the Declaration by Governments, indigenous peoples and the United Nations country teams and for the implementation of the outcome document of the World Conference. Six countries from Asia, Africa and Latin America would be covered. Those were opportunities to

advance the development of national action plans. The grant component was implemented by the International Work Group for Indigenous Affairs in cooperation with the secretariat of the Permanent Forum.

III. Closing of the meeting

41. Participants provided an overview of their agencies' activities relating to indigenous peoples' issues and discussed possible areas for coordination and cooperation. It was noted that the Pan American Health Organization (PAHO) and the Economic Commission for Latin America and the Caribbean were serving as Co-Chairs of the Support Group for Latin America. The representative of UNDP updated the Support Group on the new UNDP social and environmental standards, which included a standard specifically on indigenous peoples. The secretariat of the United Nations Indigenous Peoples' Partnership provided information on an update to Partnership that had been launched in 2011 as a joint collaboration of ILO, OHCHR, the United Nations Population Fund, UNDP and UNICEF and that had became operational in 2012.

42. A discussion was held on how the Support Group could strengthen the intersessional work of the Permanent Forum. Participants discussed the possibility of holding a full-day meeting among Support Group agencies and Permanent Forum focal points before the fourteenth session.

43. It was agreed that representatives of IFAD, OHCHR, UNDP, UN-Women, ILO, UNEP and the secretariat of the Permanent Forum would form the internal working group on the system-wide action plan. Support Group members reiterated that the United Nations Declaration on the Rights of Indigenous Peoples should serve as the basis for the plan of action and that consultation with indigenous peoples and Member States should be ensured throughout the process. The working group would convene in January 2015 and reach out to the wider membership of the Support Group on a regular basis.

44. An internal working group would be established to build on existing Support Group members' initiatives on indicators. The working group would consist of representatives of the secretariat of the Convention on Biological Diversity, the United Nations Educational, Scientific and Cultural Organization, ILO, IFAD, UNEP and OHCHR would look into operationalizing a handful of indicators relevant to indigenous peoples.

45. It was decided that a list of countries whose United Nations Development Assistance Framework was up for review would be prepared by the Support Group and that discussions on the matter would continue.

Annex I

List of participants

Agency organization	*Name*	*Title*
Secretariat of the Permanent Forum on Indigenous Issues, Department of Economic and Social Affairs of the Secretariat	Chandra Roy-Henriksen	Chief, secretariat of the Permanent Forum
Secretariat of the Permanent Forum on Indigenous Issues, Department of Economic and Social Affairs of the Secretariat	Broddi Sigurðarson	
Secretariat of the Permanent Forum on Indigenous Issues, Department of Economic and Social Affairs of the Secretariat	Arturo Requesens (connected through Skype)	
Permanent Forum on Indigenous Issues	Dalee Sambo Dorough	Chair of the Permanent Forum on Indigenous Issues
Permanent Forum on Indigenous Issues	Joan Carling	Focal point for the Inter-Agency Support Group
Human Rights Council	Victoria Tauli Corpuz	Special Rapporteur on the rights of indigenous peoples
Office of the United Nations High Commissioner for Human Rights	Antti Korkeakivi	Chief, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Samia Slimane	Human Rights Officer, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Ana de Souza	Human Rights Officer, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Estelle Salavin	Human Rights Officer, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Juan Fernando Núñez	Human Rights Officer, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Tove Holmstrom	Associate Human Rights Officer, Indigenous Peoples and Minorities Section
Office of the United Nations High Commissioner for Human Rights	Vladlen Stefanov	Chief, National Institutions and Regional Mechanisms Section
Office of the United Nations High Commissioner for Human Rights	Bamazi Kossi Tchaa	Field Operations and Technical Cooperation Division
Office of the United Nations High Commissioner for Human Rights	Saori Terada	Human Rights Officer and Gender Adviser, Gender Section

Agency organization	*Name*	*Title*
Office of the United Nations High Commissioner for Human Rights	Nicolas Fasel	Human Rights Officer, Right to Development Section
Office of the United Nations High Commissioner for Human Rights	Hee-Kyong Yoo	Office of the Special Rapporteur on the rights of indigenous peoples
International Labour Organization	Martin Oelz	Legal Specialist on Working Conditions, Conditions of Work and Equality Department
		Gender, Equality and Diversity Branch
United Nations Indigenous Peoples' Partnership	Morse Flores	Coordinator, Technical Secretariat
United Nations Entity for Gender Equality and the Empowerment of Women	Beatrice Duncan	Justice and Constitutional Adviser
United Nations Entity for Gender Equality and the Empowerment of Women	Aparna Mehotra	Senior Adviser on Coordination and Focal Point for Women in the United Nations System
United Nations Development Programme	Ana Patricia Graca	Policy Adviser on Access to Justice, Rule of Law and Security
United Nations Development Programme	Sarah Rattray	Global Policy Specialist for Human Rights
Secretariat for the Convention on Biological Diversity	John Scott	Mainstreaming, Partnerships and Outreach
		Programme Officer, Traditional Knowledge
Pan American Health Organization/World Health Organization	Dr. Anna Coates	Chief of Gender and Cultural Diversity Unit
Pan American Health Organization/World Health Organization	Sandra Del Pino	Cultural Diversity Specialist
United Nations Children's Fund	Nicolette Moodie	Human Rights and Gender Liaison Officer, Gender and Rights Section, Programme Division
United Nations Population Fund	Carmen Singa	
International Fund for Agricultural Development	Antonella Cordone	Senior Technical Specialist, Indigenous Peoples and Tribal Issues Policy and Technical Advisory Division

Agency organization	*Name*	*Title*
Food and Agriculture Organization of the United Nations	Yon Fernandez de Larrinoa	Indigenous Peoples Advocacy Unit, Office for Partnerships, Advocacy and Capacity Development
United Nations Environment Programme	Laetitia Zobel	Indigenous Issues Focal Point, Major Groups and Stakeholders Branch, Secretariat of Governing Bodies and Stakeholders
United Nations Institute for Training and Research	Trisha Riedy	Peacemaking and Conflict Prevention Programme Manager
World Intellectual Property Organization	Q'apaj Conde Choque	Indigenous Fellow
United Nations Educational, Scientific and Cultural Organization	Jennifer Rubis	Project Coordinator — Climate Frontlines, Technical Support Unit, Intergovernmental Platform on Biodiversity and Ecosystem Services Task Force on Indigenous and Local Knowledge
World Food Programme	Julian Florez (connected through Skype)	External Relations Consultant
International Land Coalition	David Rubio (connected through Skype)	Indigenous Peoples and Latin America and the Caribbean Desk Officer, International Land Coalition Secretariat
International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights	Katharina Rose	Geneva representative

Annex II

Provisional agenda of the Inter-Agency Support Group on Indigenous Peoples' Issues annual meeting for 2014

Monday, 1 December 2014

8.30-9 a.m.	Arrival and registration of participants
9-9.45 a.m.	**Welcome and official opening** Chair: Antti Korkeakivi, Office of the United Nations High Commissioner for Human Rights (OHCHR) • Welcoming and introductory remarks by Flavia Pansieri, Deputy United Nations High Commissioner for Human Rights Brief statements by: • Dalee Sambo Dorough, Chair of the Permanent Forum on Indigenous Issues • Nicolette Moodie, outgoing Chair of the Inter-Agency Support Group on Indigenous Peoples' Issues (United Nations Children's Fund (UNICEF)) • Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples Introductions by all participants Overview of the agenda and special welcome to the Co-Chair (Chair)
9.45-10 a.m.	**Video message from the Under-Secretary-General for Economic and Social Affairs, Wu Hongbo** • Video message by the Under-Secretary-General for Economic and Social Affairs and most senior official of the United Nations system responsible for coordinating follow-up action on the World Conference on Indigenous Peoples
10-11 a.m.	**Preparations for the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples** **Chair: Chandra Roy-Henriksen**, Chief, secretariat of the Permanent Forum • Presentation of a brief paper and concept note (introduction and background; expected outcome; methods of work; timelines, milestones and deadlines), Broddi Sigurðarson, secretariat of the Permanent Forum Interactive discussion, recommendations and action points

11-11.15 a.m.	Coffee/tea break
11.15 a.m.-12.30 p.m.	**Preparations for the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration** (*continued*) • Support the implementation of national action plans, strategies and other measures to achieve the ends of the Declaration Interactive discussion, recommendations and action points
12.30-1.30 p.m.	Lunch break
1.30-3 p.m.	**Preparations for the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration** (*continued*) • Preliminary remarks, Joan Carling, Permanent Forum • Sharing of experiences from developing the system-wide action plan on youth, Broddi Sigurðarson, secretariat of the Permanent Forum • Sharing of experiences from developing the system-wide action plan on gender, Aparna Mehrotra, Senior Adviser on Coordination and Focal Point for Women in the United Nations System, and Saori Terada, OHCHR Interactive discussion, recommendations and action points
3-3.15 p.m.	Coffee/tea break
3.15-5 p.m.	**Preparations for the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration** (*continued*) • The operationalization of indicators within the context of the Declaration with a focus on traditional languages, traditional occupations and recognition of traditional land tenure and changes in land use on traditional territories, John Scott, secretariat of the Convention on Biological Diversity • Presentation on the ongoing process to develop indicators on indigenous food systems and sustainable livelihoods, Antonella Cordone, International Fund for Agricultural Development (IFAD) • Enhancing indigenous peoples' access to justice and development: the development of monitoring tools, including indicators, Martin Oelz, International Labour Organization • Integrating human rights indicators in the post-2015 development framework, Nicolas Fasel, OHCHR • Indicators on indigenous peoples and the sustainable development goals, Joan Carling, Permanent Forum Interactive discussion, recommendations and action points

Tuesday, 2 December 2014

9-10.30 a.m.	**Enhancing participation and cooperation with national human rights institutions**
	Chair: Ana Patricia Graca, United Nations Development Programme
	• Role of national human rights institutions in promoting indigenous peoples' rights and engagement at the international level, Katharina Rose, Geneva Representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
	• National human rights institutions' participation in the United Nations system, Vladlen Stefanov, Chief of National Institutions and Regional Mechanisms Section, OHCHR
	Interactive discussion, recommendations and action points
10.30-10.45 a.m.	Coffee/tea break
10.45 a.m.-12.30 p.m.	**Integrating the outcome document of the World Conference on Indigenous Peoples in the processes for operational activities and programmes of United Nations agencies at the national level**
	Chair: Antonella Cordone, IFAD
	Interactive discussion, recommendations and action points
12.30-1.30 p.m.	Lunch break
1.30-2.30 p.m.	**Inter-agency collaborations for 2015, including with a focus on indigenous capacity-building**
	Chair: John Scott
	• Cooperation with the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights to follow up on the World Conference on Indigenous Peoples in the region
	• Other areas for inter-agency collaboration
	Interactive discussion, recommendations and action points
2.30-2.45 p.m.	Coffee/tea break
2.45-4 p.m.	**Other business**
	• Nomination of Co-Chair of the Support Group for 2015-2016
	• Strengthening of the intersessional work of the Permanent Forum
	• Focal points system
	• Support Group membership, internal working procedures, joint messages, etc.
	Interactive discussion, action points and accountability
4-5 p.m.	**Closing** (Chair and Co-Chair: Antti Korkeakivi and Chandra Roy-Henriksen)

United Nations E/C.19/2015/8

Economic and Social Council

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Permanent Forum on Indigenous Issues
Fourteenth session
New York, 20 April-1 May 2015
Item 5 of the provisional agenda*
Half-day discussion on the expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples"

Expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples"

Note by the Secretariat

The expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples" was held in New York on 28 and 29 January 2015. The secretariat of the Permanent Forum transmits herewith the report of the meeting.

* E/C.19/2015/1.

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Report of the expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples"

I. Introduction

1. At its thirteenth session, held from 12 to 23 May 2014, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize a three-day international expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples", based on the study prepared by the Permanent Forum on that topic (see E/C.19/2014/7). At its 46th plenary meeting, on 16 July 2014, the Council decided to authorize an international expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples" (see Council decision 2014/243), with the participation of members of the Permanent Forum, representatives of indigenous experts, interested Member States, the United Nations system and other interested intergovernmental organizations. It also requested that the results of the meeting be reported to the Permanent Forum at its fourteenth session. The expert group meeting was organized by the secretariat of the Permanent Forum. The programme of work is attached as annex I.

II. Organization of work

A. Attendance

2. The following members of the Permanent Forum attended the expert group meeting:

Dalee Sambo Dorough, Chair

Joan Carling

Megan Davis

Oliver Loode

Aisa Mukabenova

3. The following experts from United Nations mechanisms relevant to the rights of indigenous peoples attended the expert group meeting:

Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples;

Albert Deterville, Chair of the Expert Mechanism on the Rights of Indigenous Peoples;

Francisco Cali-Tzay, President, Committee on the Elimination of Racial Discrimination;

Wilton Littlechild, Member of the Expert Mechanism on the Rights of Indigenous Peoples

4. The following experts participated in the expert group meeting:

Fleur Adcock, New Zealand

Mattias Ahren, Sweden

James Anaya, United States of America

Suhas Chakma, India

Gulvayra Kutsenko, Russian Federation

Elifurah Laltaika, United Republic of Tanzania

5. The expert group meeting was attended by observers from Member States, United Nations agencies, funds and programmes, other intergovernmental organizations, indigenous peoples' organizations and non-governmental organizations. The list of participants is contained in annex II.

B. Documentation

6. The participants had before them a programme of work and documents prepared by the participating experts. The documents for the expert group meeting are listed in annex III. The documentation is also available on the website of the secretariat of the Permanent Forum: http://undesadspd.org/IndigenousPeoples/EGM2015OptionalProtocoltoUNDRIP.aspx.

C. Opening of the meeting

7. The Director of the Division for Social Policy and Development of the Department of Economic and Social Affairs provided opening remarks and welcomed participants.

D. Election of officers

8. The Chair of the Permanent Forum, Dalee Sambo Dorough, was elected the Chair of the meeting, and Megan Davis, the expert member of the Permanent Forum, was elected Rapporteur.

E. Conclusions and recommendations

9. The conclusions and recommendations are contained in section V below.

III. Background

10. Since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples there has been a clear trajectory of discussion about the need for a mechanism to monitor its implementation. This was foreshadowed in article 42 of the Declaration, which states: "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the

provisions of this Declaration and follow up the effectiveness of this Declaration". In 2009, the Permanent Forum convened an expert group meeting to explore the possibility of a "new mandate" under article 42 to review States' implementation of the Declaration (see E/C.19/2009/2).

11. In 2011, the Permanent Forum appointed Dalee Sambo Dorough and Megan Davis to undertake a study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, focusing on a potential voluntary mechanism to serve as a complaints body at the international level, in particular for claims and breaches of indigenous peoples' rights to lands, territories and resources at the domestic level (see E/C.19/2014/7). At its 46th plenary meeting, on 16 July 2014, the Economic and Social Council decided to authorize an international expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples".

12. The outcome document of the Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples (the Alta Declaration) (A/67/994, annex), held in Alta, Norway, in June 2013, and the Lima Declaration of the World Conference of Indigenous Women, held in Lima in October and November 2013, recommended a mechanism to review, monitor and report on the United Nations Declaration on the Rights of Indigenous Peoples. The proposals are reflected in paragraph 28 of the outcome document of the high-level plenary of the General Assembly known as the World Conference on Indigenous Peoples (resolution 69/2).

13. As the Forum study and the recommendation for the expert group meeting predate the World Conference on Indigenous Peoples, which was held in September 2014, for the purposes of the present report, the term "optional protocol" should be read interchangeably with "supervisory mechanism".

IV. Highlights of the discussion

14. Participants referred to articles 38 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples and paragraphs 20, 21, 28, 30 and 40 of the outcome document of the World Conference on Indigenous Peoples as empowering the creation of a supervisory mechanism or the revision of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples.

15. In paragraph 28 of the outcome document of the World Conference on Indigenous Peoples, the Human Rights Council was invited "to review the mandates of its existing mechanisms ... with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration". While there were competing interpretations of what the paragraph meant, the participants heard that any future discussion of a mechanism, in particular any revisions of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, must be joined with paragraph 28.

16. Participants agreed on the existence of an implementation gap with regard to the realization of the human rights affirmed by the United Nations Declaration on the Rights of Indigenous Peoples, although there was no consensus on the best way to address it. While some participants advocated a supervisory mechanism, others identified limitations of the supervisory mechanism approach based on the current

human rights treaty body system that counterintuitively can exacerbate the implementation gap. Participants heard that addressing the implementation gap was more complex than simply attributing its existence to a failure of the current system, particularly given the fact that many indigenous peoples have never utilized the current system because of resources, not because it is regarded as ineffective. On the other hand, some participants were of the view that, given the lack of State implementation of the Declaration, an instrument with binding obligations on States for indigenous peoples was necessary.

17. On the question of whether a declaration of the General Assembly can have an oversight mechanism, participants referred to examples of oversight mechanisms that have been created to monitor compliance with formally non-legally binding instruments, such as those affiliated with the Commission on the Status of Women, the Working Groups on Arbitrary Detention and on Enforced or Involuntary Disappearances, and the United Nations Forum on Forests. These mechanisms were comprehensively surveyed in the Permanent Forum study conducted by Megan Davis and Dalee Sambo Dorough (E/C.19/2014/7).

18. The Office of the United Nations High Commissioner for Human Rights (OHCHR) treaty body strengthening process was raised as identifying serious challenges to the human rights treaty body system. These include, but are not limited to, the workload of experts, the quality of experts, the lack of resources and the lack of States' compliance with international obligations. Any proposal for a supervisory mechanism must be viewed against the backdrop of treaty body reform.

19. Some participants argued that what is needed in terms of institutional arrangements more than a new complaint procedure is a robust programme of awareness-raising on indigenous peoples and their rights that is aimed at government officials and the general public. In addition, it must be accompanied by a well-resourced programme of technical advisory services with the expertise to assist Governments and indigenous peoples on the development of regulatory reforms and remedies for rights violations, consultations over those reforms and other matters relevant to the effective realization of indigenous peoples' rights.

20. In further discussions on the potential limitations of any new or revised mechanism, participants heard about the concept of "rights ritualism". Rights ritualism means the "acceptance of institutionalized means for securing regulatory goals, while losing all focus on achieving the goals or outcomes themselves".[1] Rights ritualism can act as a mask to conceal Member States' resistance to norms. This means that Member States accede to treaties and optional protocols, yet, beyond signing, demonstrate very little commitment to implementing obligations. A recent empirical study undertaken by Hilary Charlesworth examined rights ritualism and the universal periodic review of the Human Rights Council.[2] Participants heard how any future mechanism must take the risks and advantages of ritualism into account and innovate in a way so as to avoid the limitations of the conventional oversight mechanism.

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[1] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham, United Kingdom of Great Britain and Northern Ireland, Edward Elgar, 2007).

[2] Hilary Charlesworth and Emma Larking, eds., *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge, Cambridge University Press, 2015).

21. Other challenges referred to included the lack of resources of indigenous peoples to utilize such a body. Participants heard how setting up a new mechanism will not address the implementation gap if the mechanism is voluntary or optional or if indigenous peoples do not have the resources to access it. The features of any supervisory body to the United Nations Declaration on the Rights of Indigenous Peoples must be carefully considered in a way that bridges, rather than reinforces, the implementation gap.

22. In discussing the implementation gap, participants highlighted the existence of other mechanisms that indigenous peoples can utilize, including the Human Rights Council's universal periodic review and other United Nations treaty bodies and regional mechanisms. It was evident that there is not a clear picture of what supervisory bodies, such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, are doing on indigenous rights. Although some indigenous groups, predominantly from high-income countries, have utilized these mechanisms, many indigenous peoples have not accessed them, nor do they have the resources to do so. Therefore, it cannot be said conclusively that these mechanisms are ineffective. It was agreed that further study is required.

23. Participants heard that a newly created supervisory body or revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples could experience similarly low rates of State conformity and ritualized State engagement as the treaty body system. If there is no review of what the current system does wrong, then the creation of a new mechanism or revision of the mandate of the Expert Mechanism may not be any different to what exists now.

24. Many participants raised the possibility of duplication in the treaty bodies and within the three indigenous mechanisms. It was discussed that duplication is not necessarily problematic and in fact has its benefits; it means the issue is being dealt with in multiple ways. Others saw duplication as challenging if there is not a clear demarcation of existing international bodies. An example drawn of where duplication may arise was the work of the previous Special Rapporteur on the rights of indigenous peoples, who has written extensively on the character of self-determination and free, prior and informed consent. The question was raised about whether any new or modified existing mechanism may provide interpretations that are conflicting or contradictory and how that could be reconciled.

25. The participants were not prescriptive about what form or what features a supervisory body or revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples should take. Some participants said that a revised mandate of the Expert Mechanism would not make it an oversight mechanism and others advocated for it to adopt features of a conventional oversight mechanism. The consensus was on the need for further discussion and assessment of the existing human rights regime in the context of indigenous peoples.

V. Conclusions and recommendations

A. Conclusions

Theme 1: Is a supervisory mechanism required in relation to the United Nations Declaration on the Rights of Indigenous Peoples? Is there an implementation gap?

Approaches to creating a supervisory mechanism

26. The conventional approach to addressing an implementation gap is to create a supervisory mechanism. A supervisory mechanism is traditionally empowered by way of an ancillary agreement called an "optional protocol". As explored in the Permanent Forum study, there is very little literature on the necessary technical aspects of optional protocols and no literature that says that a United Nations declaration cannot have a supervisory mechanism.

27. Alternatively, the outcome document of the World Conference on Indigenous Peoples, in paragraph 28, envisaged the Human Rights Council reviewing and modifying the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to assist Member States in monitoring, evaluating and achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples.

Implementation gap

28. The exigency of a more formalized approach to monitoring States' implementation of the United Nations Declaration on the Rights of Indigenous Peoples emerged out of concern about an "implementation gap" in regard to the Declaration. The term "implementation gap" was coined by the first Special Rapporteur on the rights of indigenous peoples, Rodolfo Stavenhagen, in a 2007 report highlighting the existence of an "implementation gap" between national and international recognition of indigenous peoples' rights and State policies and programmes affecting indigenous peoples, which commonly fail to take account of or contravene indigenous rights (A/HRC/6/15, para. 9). Subsequent reports of the second Special Rapporteur, James Anaya, reinforce this notion.

29. Some participants pointed out that the existence of an implementation gap means existing mechanisms are insufficient for implementation of the United Nations Declaration on the Rights of Indigenous Peoples. On the other hand, participants also heard that they do not have a full or clear picture because most indigenous representatives do not have the resources or education to utilize such mechanisms. Participants heard that it is important, before moving ahead to create a new supervisory mechanism, to take stock, evaluate or audit what existing mechanisms are doing and what they have done. An exhaustive analysis is required, as there is a lack of analysis of what they do.

30. A supervisory mechanism is not the only way for the United Nations system and other actors to improve the implementation of the Declaration. Awareness-raising and technical advice are equally important approaches to compelling better implementation of international norms. The participants heard that, with respect to human rights, the international legal system does not work by command. Rather, States' compliance with human rights standards tends to arise from multidimensional processes of norm internalization, validation and application that

engage local actors.[3] The local internalization of a norm occurs not only because a gap or a wrong is identified, but because at the local level there is awareness of the norm, an acceptance of its legitimacy and the existence of conditions conducive for implementation.

31. Participants heard how they are at only the beginning stages of acceptance of the standards enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Acceptance is not yet that deep within Governments, especially officials at the national and local level, or within broader societies at the national level. Based on his work over the two terms of his mandate, the previous Special Rapporteur on the rights of indigenous peoples identified awareness-raising as being critical to the acceptance of indigenous norms among government actors, the United Nations system, indigenous peoples themselves and, more generally, society. He observed throughout his work a lack of knowledge and understanding about the Declaration, the values that it represents or the deep-seated issues confronting the indigenous peoples that it addresses.

32. Awareness-raising and technical assistance to Governments are therefore two other approaches, although these are not mutually exclusive. The work of the Special Rapporteur on the rights of indigenous peoples indicates that the promotion of good practices and providing technical assistance has had a positive effect, with many of the recommendations being taken up in legal and policy reforms made at the international and national levels. Further attention should be given to providing technical assistance directly to indigenous peoples themselves, including in order to strengthen their negotiation capacity and their ability to carry out their own initiatives in promotion of their rights. Participants heard that national human rights institutions have an important role to play in this regard.

Theme 2: What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage "rights ritualism"?

Limitations of the current human rights monitoring system

33. The participants undertook to explore the limitations of the current international human rights monitoring system as an important and necessary step in creating any new mechanism. Discussions about creating a supervisory mechanism are taking place against a backdrop of treaty body reform in the United Nations. In particular, specific reference was made to the OHCHR treaty body strengthening process, which has identified challenges in the international human rights treaty body system, including but not limited to the high workload of experts, the quality of experts, the lack of resources for both committees in their work and for many Member States in compliance. The current international human rights law system faces a number of key limitations in regard to the monitoring of rights that a new mechanism is in danger of replicating and must seek to avoid.

34. One of the limitations of the current system is the "carrot and stick" approach to monitoring that involves naming and shaming, manifest in periodic reporting procedures of United Nations treaty bodies, but will not on its own achieve norm internalization.

[3] See, for example, Harold Hongju Koh, "Why do nations obey international law?", *Yale Law Journal*, vol. 106, No. 8 (1997).

35. "Shaming" is the primary regulatory approach engaged by much of the United Nations system. Shaming is reliant on the State being made aware in private or in public that it is non-compliant with international human rights norms and that this non-compliance is not accepted. Participants heard how shaming is at the weak end of the stick approach; the stronger end is deployment of economic and military coercion, but these stronger forms are generally not available in the international human rights system.

36. Participants heard how shaming is to some extent effective, but it is fleeting and only touches the surface of government behaviour and action. An example of this is how officials in foreign ministries working at the international level may be more or less familiar with standards contained in the United Nations Declaration on the Rights of Indigenous Peoples with respect to rights to lands and resources, but officials in the national lands offices, where the substance of land laws are implemented, do not. There is thus often a disconnect between States' representations at the international level and the application of law and policy on the ground.

37. Following on this, participants heard how capacity-building can help States meet their obligations. Capacity-building is distinct from shaming in that it is proactive rather than reactive. Participants heard how the United Nations system is increasingly adopting a more constructive and collaborative approach to implementation of international human rights standards. Capacity-building is an approach supported by the previous Special Rapporteur on the rights of indigenous peoples as moving beyond reacting to denouncements of alleged human rights violations to helping to assist indigenous and States to develop concrete proposals and programmes of action for advancing the rights of indigenous peoples, which was supported in the expert group meeting by the Special Rapporteur.

38. Other limitations of the current system as identified by some participants included the limitations of adjudicative bodies at the international level. For example, the effectiveness of the complaint mechanism associated with treaties of the International Labour Organization, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169), is limited because of the low level of ratifications of that instrument. There is a concern that any optional protocol designed to monitor the Declaration would similarly have few ratifications. If so, an optional protocol would not effectively address the implementation gap for those indigenous peoples whose States do not ratify, nor would a revised mandate of the Expert Mechanism on the Rights of Indigenous Peoples that was voluntary.

39. Another shortcoming of the international human rights monitoring system is that compliance with international decisions, even with binding decisions, is low. If looking to the regional adjudicative mechanisms within the inter-American and African human rights systems, there are routinely decisions finding violations of the rights of indigenous peoples, but State compliance with and implementation of these decisions is low and delays are common. Participants heard that implementation of decisions are often a result of political decisions and internal dynamics. The question remains: how do you foster internalization of norms, legitimacy and acceptance in order to achieve compliance with international standards and close the implementation gap?

40. Participants expressed that one of the main failings of the existing mechanisms is that they have not sufficiently engaged in analysis of the right to self-determination. While the Special Rapporteur has specifically provided authoritative

guidance on the right to self-determination, treaty bodies have had little engagement on this issue. The question was asked, what will it take for other mechanisms to analyse the indigenous right to self-determination?

Rights ritualism

41. As noted in the highlights for discussion, rights ritualism was presented as a useful lens through which to understand the limitations of the international human rights treaty body system. Rights ritualism is the acceptance of institutionalized means for securing regulatory goals, while losing all focus on achieving the goals or outcomes themselves.

42. Rights ritualism does not automatically negate the need for a supervisory mechanism. Participants heard ways in which rights ritualism can be avoided by remaining alert and inspecting beneath the surface of States' formal indigenous rights practices. Suggestions for a supervisory mechanism that can avoid the pitfalls of ritualism include the following: (a) prioritize institutionalized follow-up of implementation of the body's recommendations; (b) carefully select experts with sufficient expertise and capacity to sit on the body who are familiar with the work of other international and regional bodies' commentary on the United Nations Declaration on the Rights of Indigenous Peoples and who will advance strong articulations of the rights that it affirms; (c) provide for robust United Nations Secretariat and institutional support for the body; (d) ensure that the body's processes and working methods are streamlined and not overly burdensome; (e) carefully demarcate the role of the new body from the existing international bodies that also comment on States' conformity to the Declaration; and (f) ensure that the body devotes attention to building the strengths and capacities of States rather than solely focusing on what States do wrong.

43. The concept of a "learning culture", rather than a culture of blame, was promoted as being more effective. Encouraging States to continuously improve their compliance with rights of indigenous peoples is an important cooperative approach. Human rights bodies embracing such an approach would start by endeavouring to understand what a State is good at and would then build human rights commitment outwards through shared projects.

Theme 3: What are some of the problems with the implementation of the Declaration pertaining to lands, territories and resources?

44. The impetus for a monitoring mechanism for the United Nations Declaration on the Rights of Indigenous Peoples often comes from the problems of implementation pertaining to lands, territories and resources. Participants pointed out commitments made by States in the Declaration to establish at the national level, in conjunction with the indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources. This commitment is also reflected in paragraph 21 of the outcome document of the World Conference on Indigenous Peoples, which refers to the need to establish mechanisms to recognize and adjudicate indigenous peoples rights to lands. Yet States are not implementing this.

45. Participants heard about the challenges of the implementation of lands, territories and resources in specific contexts. One of the issues illuminated by this

discussion was that need for indigenous peoples to have improved knowledge about the international human rights system and access to financial resources to make use of this system. Participants again reiterated the need for awareness-raising and technical support as an alternative or a parallel to a complaint mechanism.

Theme 4: What are the lessons that can be learned from other mechanisms?

46. Participants heard about lessons from other mechanisms from the human rights treaty body system and regional bodies such as the African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights. The importance of regional bodies is referred to in paragraph 30 of the outcome document of the World Conference on Indigenous Peoples.

47. Participants welcomed the increasingly important role of national and regional human rights institutions in contributing to the achievement of the ends of the Declaration. They encouraged the private sector, civil society and academic institutions to take an active role in promoting and protecting the rights of indigenous peoples.

Theme 5: What would be the features of an oversight mechanism?

48. Discussions about the features of an oversight mechanism covered many diverse issues. Participants heard that the establishment of any new oversight mechanism requires clarity of purpose and scope of application. In particular it must avoid duplication of the work of the Special Rapporteur on the rights of indigenous peoples and United Nations treaty bodies. While duplication has its benefits in terms of reinforcement of norms, there must be a comprehensive factual analysis of existing mechanisms before there is a move forward with any new oversight mechanism.

49. Potential features of a supervisory body or revised Expert Mechanism on the Rights of Indigenous Peoples included but were not limited to consideration by the Mechanism of periodic reports by States with indigenous peoples; the issuance of concluding observations and general comments; the carrying out of fact-finding missions in connection with specific human rights situations or allegations; and receiving complaints regarding violation of rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. For each of these features there were differing views as to whether such features would be effective or appropriate.

Theme 6: Is there an existing United Nations mechanism that could be adapted to do the work of an oversight body?

50. Participants discussed the proposal for the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to be amended in accordance with paragraph 28 of the outcome document of the World Conference on Indigenous Peoples. Participants pointed out that the Human Rights Council will be discussing this provision and that there need to be proposals by indigenous peoples in this regard. There were other interpretations of paragraph 28 of the outcome document, with some participants noting that the paragraph refers to assisting Member States "to monitor, evaluate and improve the achievement of the ends of the Declaration", indicating a more cooperative approach over an adversarial monitoring mechanism.

51. Some participants suggested that the mandate of the Expert Mechanism on the Rights of Indigenous Peoples should be modified to allow it to receive information from indigenous peoples, as well as States, on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Suggestions were made regarding what functions the Expert Mechanism could undertake, including receiving communications from indigenous peoples and conveying conclusions through country-specific reports and general observations. Some participants suggested that any reporting procedure would be voluntary and that States should not be compelled to engage; there was no consensus on this.

52. Suggestions were made about how the other mandates could assist in monitoring the United Nations Declaration on the Rights of Indigenous Peoples. Participants heard that the mandate of the Permanent Forum does not necessarily restrict the Permanent Forum from issuing communiqués or statements on issues pertaining to the Declaration, including on specific cases, or from engaging in interactive dialogues with States regarding the implementation of the Declaration. However, this will require innovation in the Permanent Forum's working methods and decision-making processes.

53. The Expert Mechanism on the Rights of Indigenous Peoples, like the Permanent Forum, could also amend its agenda, subject to approval by the Human Rights Council, to include interactive dialogue with States on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in their respective countries. States that are supposed to voluntarily accept the jurisdiction of a complaint mechanism should be inclined to participate in such a dialogue.

B. Recommendations

States

Implementation gap

54. The participants expressed deep concern at the implementation gap of the United Nations Declaration on the Rights of Indigenous Peoples. Implementation of the standards of the Declaration requires compliance with those standards by the authorities whose responsibilities affect the lives of indigenous peoples. Ultimately, it is those authorities, working at the domestic level within their respective spheres of competency, whose compliant behaviour and action are required to compel better implementation. Needed reforms in administrative practices, policies and legislation can come about only through executive and legislative action taken at the domestic level; and where the exercise of judicial authority bears upon indigenous peoples' rights, the implementation of the Declaration requires judicial decision-making consistent with its terms.

United Nations system

Implementation gap

55. The Human Rights Council should conduct a comprehensive review of the current system in order to understand how indigenous peoples are utilizing existing United Nations treaty bodies and the universal periodic review and other regional mechanisms.

56. The Human Rights Council should conduct a further study on lands, territories and resources in order to discern why there is excessively weak implementation and what a mechanism could do to address these fundamental indigenous human rights.

Supervisory mechanism

57. The Human Rights Council, in its future deliberations on modifying the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, in accordance with paragraph 28 of the outcome document of the World Conference on Indigenous Peoples, shall take into account the report of this expert group meeting and the issues and concerns raised therein.

58. The Human Rights Council should ensure that any deliberations concerning a proposed optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, including any proposed revision of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, include the full, effective and equal participation of all indigenous peoples, in line with the Declaration.

Annex I

Agenda and programme of work

Date time	*Item programme*	
Wednesday, 28 January 2015		
10-10.30 a.m.		Opening remarks by Daniela Bas, Director of the Division for Social Policy and Development, Department of Economic and Social Affairs
	Item 1	Election of Chair and Rapporteur
	Item 2	Adoption of agenda and organization of work
10.30 a.m.-1 p.m.		*Opening presentations*
		Megan Davis and Dalee Sambo Dorough
		Theme 1: Why is an optional protocol required for the United Nations Declaration on the Rights of Indigenous Peoples?
		(a) Is there an implementation gap?
		(b) What are the compelling reasons for the creation of a supervisory body for the United Nations Declaration?
		(c) Is there an implementation gap and is it more acute in some areas of the United Nations Declaration, namely, lands, territories and resources?
		Presentation
		James Anaya
		General discussion
3-6 p.m.		
3-4.30 p.m.		**Theme 2: What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage "rights ritualism"?**
		(a) Given the recent treaty body reform, how does the creation of another body address some of the concerns that States and human rights mechanisms have about the effectiveness of such bodies, the workload and issues of duplication?
		(b) Given the burgeoning literature on the failure of the "carrot and stick approach" to human rights implementation, including the concept of "rights ritualism", how could this body be different?
		(c) What are the limitations of taking this approach?

Date time	*Item programme*	
		Presentation
		Fleur Adcock
		General discussion
4.30-6 p.m.		**Theme 3: What are some of the problems with the implementation of the United Nations Declaration pertaining to lands, territories and resources?**
		What are the limitations of State-based mechanisms pertaining to lands, territories and resources?
		Presentation
		Gulia Kutsenko
		General discussion
Thursday, 29 January 2015		
10 a.m.-1 p.m.		
10-11 a.m.		**Theme 4: What are the lessons that can be learned from other mechanisms?**
		(a) How do regional mechanisms work? Are they effective? How are they different from United Nations mechanisms?
		(b) What lessons could be drawn from other optional protocol supervisory bodies?
		Presentation
		Suhas Chakma
		General discussion
11 a.m.-12 p.m.		**Theme 5: What would be the features of an oversight mechanism? Who would be subject to review and what would the admissibility requirements be?**
		(a) What types of models might be appropriate for the United Nations Declaration?
		(b) How would admissibility requirements work?
		(c) What are the benefits of a voluntary mechanism?
		(d) How are cases selected?
		(e) How should the body be constituted?
		(f) What should the working methods be?

Date time	*Item programme*
	Presentation
	Elifurah Laltaika
	General discussion
12-1 p.m.	**Theme 6: Is there an existing United Nations body that could be adapted to do the work of an oversight body?**
	Presentation
	Mattias Ahren
	General discussion
3-6 p.m.	Adoption of the conclusions and recommendations

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Dalee Sambo Dorough, Chair

Joan Carling

Megan Davis

Oliver Loode

Aisa Mukabenova

Invited experts

Fleur Adcock, New Zealand

Mattias Ahren, Sweden

James Anaya, United States of America

Suhas Chakma, India

Gulvayra Kutsenko, Russian Federation

Elifurah Laltaika, United Republic of Tanzania

Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples

Albert Deterville, Chair, Expert Mechanism on the Rights of Indigenous Peoples

Wilton Littlechild, Member, Expert Mechanism on the Rights of Indigenous Peoples

Francisco Cali Tzay, Chair, Committee on the Elimination of Racial Discrimination

United Nations system

Food and Agriculture Organization of the United Nations (FAO)

Office of the United Nations High Commissioner on Human Rights (OHCHR)

Pan American Health Organization (PAHO)

United Nations Development Programme (UNDP)

United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

Non-governmental organizations and academic institutions

American Indian Law Alliance

Assembly of First Nations

Cultural Survival

Chittagong Hill Tracts Foundation

Columbia University

Conservation International

Gáldu Resource Centre for the Rights of Indigenous Peoples

Grand Council of the Crees (Eeyou Istchee)

Indian Law Resource Center

Indigenous World Association

Canadian Friends Service Committee (Quakers)

International Indian Treaty Council

Keep Girls Safe Foundation

National Congress of Australia's First Peoples

National Indian Youth Council

NRK Sápmi

Ochapowace Cree Nation

Sami Parliament of Norway

Tribal Link Foundation

University of Toronto

University of Vienna

States

Argentina

Armenia

Bangladesh

Bolivia (Plurinational State of)

Brazil

Canada

Chile

Colombia

Ecuador

El Salvador

Finland

Greece

Iraq

Mexico

New Zealand

Philippines

Russian Federation

South Africa

Turkey

United States of America

Viet Nam

Intergovernmental organizations

European Union

Annex III

List of documents

Concept note

Programme of work for the Expert Group Meeting

Paper submitted by Fleur Adcock

Paper submitted by Mattias Ahren

Paper submitted by James Anaya

Paper submitted by Suhas Chakma

Paper submitted by Elifurah Laltaika

Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism (E/C.19/2014/7)

All the reports, including other documents submitted during the meeting, are available on the website of the secretariat of the Permanent Forum on Indigenous Issues: http://undesadspd.org/IndigenousPeoples/EGM2015OptionalProtocoltoUNDRIP.aspx.